

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ROBERT J. DALE, individually,

Plaintiff,

VS.

AMC WEST HOUSING, L.P. dba
BALFOUR BEATTY COMMUNITIES
L.L.C., and BALFOUR BEATTY
INVESTMENTS L.L.C.,

Defendants.

No.

COMPLAINT FOR DAMAGES

(JURY TRIAL DEMANDED)

I. PARTIES

1.1 The Plaintiff, ROBERT J. DALE, is an active-duty service member with the United States Navy and resides in housing at Fairchild Air Force Base managed by the Defendant.

1.2 Defendants, AMC WEST HOUSING, L.P., dba BALFOUR BEATTY COMMUNITIES L.L.C. and BALFOUR BEATTY INVESTMENTS L.L.C., hereinafter “BALFOUR BEATTY” is a Limited Liability Company headquartered in the State of Pennsylvania and at all times material hereto operating under contract with the federal government and the United States Air Force for the maintenance, and upkeep of the base housing and residential areas at Fairchild Air

COMPLAINT FOR DAMAGES- 1

J|M Felice Legal, PLLC
207 W. Nora Ave.
Spokane, WA 99205
(509) 309-3132
FAX (509) 321-7160

1 Force Base.

2 **II. JURISDICTION AND VENUE**

3 2.1 The Court has jurisdiction over this action under 28 U.S.C § 1331 because Fairchild Air
4 Force Base is a federal enclave and this matter involves a federal question.

5 2.2 This Court has jurisdiction over this action under 28 U.S.C § 1332 because the Plaintiff
6 and Defendants are citizens of different States and the matter in controversy exceeds \$75,000.00

7 2.3 Venue is appropriate under 28 U.S.C § 1391(b)(2) because a substantial part of the
8 events or commissions giving rise to the claims occurred in this District.
9

10 **III. FACTUAL BACKGROUND**

11 *A. Privatization of Housing on Fairchild Air Force Base.*

12 3.1 In 1996 Congress passed the National Defense Authorization Act for Fiscal Year 1997,
13 which authorized the development of the Military Housing Privatization Initiative (“MHPI”).
14 The goal was to improve existing military housing by outsourcing construction and maintenance
15 housing to private contractors.
16

17 3.2 Under the privatization initiative, private developers and contractors can receive long
18 term lease arrangements and contracts for existing housing, planned housing, and the
19 maintenance thereof. These contracts include bonuses, or incentive fees, that private contractors
20 and/or landlords can earn by meeting performance goals set with the military. To receive the
21 fees, real estate companies must meet quarterly and annual goals, such as responding to resident
22 maintenance requests within a specific time.
23
24

1 3.3 Fairchild Air Force Base, home to a major Air Force installation, participates in this
2 privatized housing initiative. As discussed more fully below, Defendants operate and manage
3 the housing and its upkeep on Fairchild Air Force Base.

4 3.4 BALFOUR BEATTY COMMUNITIES, L.L.C., a subsidiary of BALFOUR BEATTY
5 INVESTMENTS L.L.C. located in Malvern, Pennsylvania, runs the military housing unit of
6 Balfour Beatty P.L.C., a London-based infrastructure company with a reported annual revenue
7 of approximately \$10.7 billion. Balfour Beatty Communities President, Chris Williams, told
8 Congress the company earns approximately \$33 million in annual profit on its military housing
9 operations. It has been estimated that incentive fees alone on those operations are worth about
10 \$800 million over the life of the 50 year contract it holds for the 43,000 homes on 55 Air Force,
11 Navy and Army bases across the country.

12 3.5 For over one year, the United States Air Force stopped paying incentive fees to
13 BALFOUR BEATTY pending a review, and referred incidents to the Air Force investigators
14 and the Federal Bureau of Investigations for failures to perform its contractual and legal duties
15 under contract at Fairchild Air Force Base.

16 3.6 The Defendant, BALFOUR BEATTY, has falsified and/or failed to keep and maintain
17 adequate records pertaining to maintenance and removal of trees on Fairchild Airforce Base to
18 earn incentive fees.

19 *B. Damages Sustained by Robert J. Dale.*

20 3.7 Plaintiff, Navy Counsel First Class ROBERT J. DALE, is an active duty recruiter with
21

1 over a decade of service in the United States Navy.

2 3.8 In August of 2010, ROBERT J. DALE moved into Fairchild Air Force Base housing at
3 the residence of 9217 Utah Drive, Fairchild Air Force Base, Washington, 99011.

4 3.9 The back yard of ROBERT J. DALE's residence includes a white fenced perimeter and a
5 grass lawn. On the other side of the fence and outside of ROBERT J. DALE's backyard is an
6 area BALFOUR BEATTY is contracted to maintain and upkeep.

7 3.10 At the time of the incident set forth below in the following paragraphs, a visibly dead
8 tree with dead limbs was very near ROBERT J. DALE'S backyard. EXHIBIT A to Complaint.

9 3.11 Prior to the incident complained of herein, other military families, including ROBERT J.
10 DALE's former spouse, complained of dead trees on the base jeopardizing the health and safety
11 of Fairchild Air Force Base residents.

12 3.12 At the time of the incident described below in paragraph 3.13, the Defendant,
13 BALFOUR BEATTY, had also been notified of the hazards associated with the specific tree
14 which ultimately seriously injured the Plaintiff, ROBERT J. DALE.

15 3.13 On August 10, 2017, and pursuant to the direction and instructions of the Defendant
16 BALFOUR BEATTY, ROBERT J. DALE was at home at 9217 Utah Drive, when he went out
17 to water a grassy area outside of his fenced backyard. As ROBERT J. DALE was in the process
18 of watering the grassy area, a limb from one of the dead trees fell and struck ROBERT J. DALE
19 on the head when we was changing the sprinkler.

20 3.14 The blow to ROBERT J. DALE's head from the falling limb was violent causing him to
21
22

1 lose consciousness for hours resulting in a traumatic brain injury necessitating medical care and
2 related expenses, lost wages, in addition to personal injuries resulting in the loss and impairment
3 of vocational, social, recreational activities, and emotional distress in amounts to be proven at
4 the time of trial.

5
6 **IV. CAUSES OF ACTION**

7 4.1 Plaintiff re-alleges paragraphs 1.1 through 3.14 above and incorporates them by
8 reference as though fully set forth herein.

9
10 *A. TORT OF OUTRAGE*

11 4.2 Defendant, BALFOUR BEATTY's, extreme and outrageous conduct in failing to
12 adequately respond to complaints made regarding dead trees on Fairchild Air Force Base and its
13 failure to remove the trees complained about, intentionally and recklessly caused severe injury
14 and emotional distress to the Plaintiff, ROBERT J. DALE.

15 4.3 The actions, errors, and omissions of the Defendant, BALFOUR BEATTY, constitutes
16 an intentional and reckless disregard of the rights of, and even more deplorable behavior
17 towards, the Plaintiff, ROBERT J. DALE, and others.

18
19 *B. BREACH OF CONTRACT*

20 4.4 At all times material hereto, the Defendant, BALFOUR BEATTY, and the United States
21 Air Force/Government entered into a contract/Ground Lease under the authority of the National
22 Defense Authorization Act for Fiscal Year 1997 for the management, upkeep, and maintenance
23 of residences and residential areas on Fairchild Airforce Base.

1 4.5 As a resident of Fairchild Air Force Base, the Plaintiff, ROBERT J. DALE, is an
2 intended third-party beneficiary of the contracts/Ground Lease between the Defendant,
3 BALFOUR BEATTY, and the United States Air Force/Government.

4 4.6 The Defendant, BALFOUR BEATTY's failure to maintain and upkeep the dead trees
5 and adjacent area to the Plaintiff, ROBERT J. DALE's, residence, constitutes a breach of
6 contract, which caused economic damages to the Plaintiff as set forth in the Prayer of this
7 Complaint and to be proven at the time of trial.
8

9 *C. NEGLIGENCE*

10 4.7 The Defendant, BALFOUR BEATTY, specializes in the business of privatized military
11 housing and owes a duty to the residents of Fairchild Air Force Base, including the Plaintiff
12 ROBERT J. DALE, to provide them with safe and habitable living conditions in their
13 neighborhood which includes properly maintaining the trees and grounds surrounding their
14 residence.
15

16 4.8 The Defendant, BALFOUR BEATTY's, errors and omissions set forth herein are a result
17 of its breach of duty to exercise reasonable care for the safety and wellbeing of base residents
18 and is an additional breach of its duty as a reasonable and prudent contractor specializing in
19 upkeep and maintenance of residential housing on a United States Air Force base.
20

21 4.9 Defendant's conduct is and has been below the applicable standard of care.

22 4.10 The Defendant, BALFOUR BEATTY's, breach of duty to the Plaintiff, ROBERT J.
23 DALE proximately caused serious injuries and damages set forth in paragraph 3.13 and 3.14 in
24

1 the form of economic and noneconomic damages which will be proven at the time of trial. Such
2 damages include social, vocational, and recreational impairment.

3 **PRAYER FOR RELIEF**

4
5 WHEREFORE, the Plaintiff respectfully requests that this Court enter and order and
6 judgment providing the following relief:

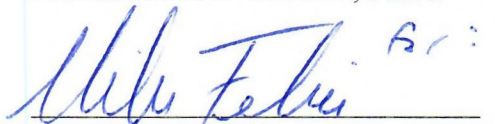
- 7 1. For economic and noneconomic damages to be proven at the time of trial;
8 2. For damages resulting from breach of contract;
9 3. For punitive and/or exemplary damages;
10 4. Prejudgment and post judgment interest;
11 5. Plaintiff's costs and reasonable attorney's fees; and
12 6. For such further relief as the Court deems appropriate.

13
14 **JURY DEMAND**

15 Plaintiff demands a trial on all counts so triable.

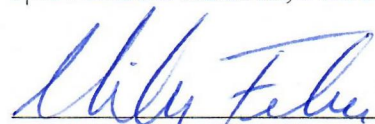
16 DATED this 20th day of July, 2020.

17
18
19 AXTELL LAW OFFICE, PLLC

20 

21 BRAD J. AXTELL, WSBA #17451
22 Attorney for Plaintiff

J|M FELICE LEGAL, PLLC

23 

24 MICHAEL V. FELICE, WSBA#34952
25 Attorney for Plaintiff

EXHIBIT A

